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SENATE DRS45322-MQ-63A (03/13)

Short Title: Seniors' Fraud Protection Act. (Public)

Sponsors: Senators Stein and Bingham (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO CREATE PROTECTIONS FOR SENIOR CITIZENS AND OTHER
3 CONSUMERS RELATED TO RESIDENTIAL CONTRACTORS; TO REQUIRE THE
4 ATTORNEY GENERAL TO OPERATE A DATABASE THAT CAN BE USED TO
5 INVESTIGATE POTENTIAL FINANCIAL EXPLOITATION OF ADULTS; AND TO
6 REQUIRE THAT FINANCIAL INSTITUTIONS REPORT POTENTIAL FINANCIAL
7 EXPLOITATION OF OLDER ADULTS TO THE ATTORNEY GENERAL.

8 The General Assembly of North Carolina enacts:

9
10 **PART I. CONSUMER PROTECTIONS RELATED TO RESIDENTIAL**
11 **CONTRACTORS**

12 **SECTION 1.** Chapter 75 of the General Statutes is amended by adding a new
13 Article to read:

14 "Article 9.

15 "Residential Contractors.

16 "**§ 75-150. Definitions.**

17 The following definitions apply in this Article:

- 18 (1) General construction. – The installation, replacement, or repair of a building,
19 structure, asphalt or concrete paving, or improvement of any kind to real
20 property.
- 21 (2) Public contract. – A contract with the State of North Carolina, its political
22 subdivisions, or any board, commission, agency, or department thereof or
23 with any board of county commissioners or with any city council, school
24 board, or with any State or municipal agency or with any other public board,
25 body, commission, or agency authorized to award contracts for the
26 construction or reconstruction of public work. The term includes
27 subcontracts undertaken to perform works covered by the original contract
28 or any part thereof.
- 29 (3) Residential contractor. – A person, firm, partnership, corporation, or other
30 business entity who, for a fixed price, commission, fee, or wage, contracts or
31 engages in general construction services that are limited to construction,
32 remodeling, repair, maintenance, or improvement to one-family, two-family,
33 or three-family residences, including any improvements or accessories
34 related to the real property to which the residence is attached. The term shall
35 not include any of the following:



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- 1 a. A person engaged in the demolition of a structure or the cleanup of
2 construction waste and debris.
3 b. A person working under the direct supervision of a residential
4 contractor who is hired either as an employee, day laborer, or
5 contract laborer.
6 c. A general contractor licensed under Article 1 of this Chapter.
7 d. A subcontractor hired by a general contractor licensed under Article
8 1 of this Chapter.

9 **"§ 75-151. Prohibited conduct.**

10 (a) A residential contractor shall not do any of the following:

- 11 (1) Advertise or promise or offer to pay or rebate all or any portion of any
12 insurance deductible as an inducement to the sale of any goods or services.
13 (2) Offer or provide any upgraded work, material, or product, grant any
14 allowance or offer any discount against the fees to be charged or paying the
15 consumer or any person directly or indirectly associated with the property
16 any form of compensation, gift, prize, bonus, coupon, credit, referral fee,
17 trade-in or trade-in payment, advertising, or other fee or payment as an
18 inducement to the sale of any goods or services.
19 (3) Offer or provide anything of value in exchange for permitting the residential
20 contractor to display a sign or any other type of advertisement at the
21 consumer's premises.
22 (4) Seek to obtain a power of attorney from or on behalf of a consumer, offer to
23 report or adjust a claim on behalf of a consumer, represent or negotiate, or
24 offer or advertise to represent or negotiate, obtain or attempt to obtain an
25 assignment of claims rights or assignment of benefits or assignment of
26 proceeds, from or on behalf of either a consumer or of an owner or possessor
27 of residential real estate, on any insurance claim in connection with the
28 performance of any general construction work.

29 (b) An adjuster as defined in G.S. 58-33-10(2) or a public adjuster as defined in
30 G.S. 58-33A-5(7) shall not act as a residential contractor.

31 **"§ 75-152. Written contract required; required contents.**

32 A contract for general construction, including a public contract, shall be in writing, signed
33 by both parties, and shall do all of the following:

- 34 (1) Include a copy of a work estimate that contains all of the following
35 disclosures:
36 a. A precise description and location of all damage claimed on the work
37 estimate.
38 b. An itemized estimate of general construction costs, including the cost
39 of raw materials, hourly labor rate, and the number of hours for each
40 item of work or a unit cost basis.
41 c. If damaged areas are not included on the work estimate, a
42 specification of those areas and any reason for their exclusion from
43 the work estimate.
44 d. A statement of whether the property was inspected prior to the
45 preparation of the estimate and a description of the nature of that
46 inspection.
47 e. A statement that the residential contractor has made no assurances
48 that the claimed loss will be covered by an insurance policy.
49 f. A copy of the residential contractor's license certification issued
50 pursuant to Article 1B of Chapter 87 of the General Statutes.

- 1 (2) Include a disclosure that the consumer is responsible for payment for any
2 work performed if the insurer should deny payment or coverage on any part
3 of the loss.
- 4 (3) Be written in the same language as that principally used in any sales
5 presentation, oral or otherwise.
- 6 (4) Designate as the date of the transaction the date on which the consumer
7 actually signs the agreement or offer.
- 8 (5) Contain the name and physical address of the residential contractor.
- 9 (6) Contain in immediate proximity to the space reserved for the signature of the
10 buyer in bold-face type of a minimum size of 10 points, a statement in
11 substantially the following form:
12 "You may cancel this contract or transaction at any time prior to
13 midnight of the third business day after you have received written
14 notification from your insurer that all or any part of the claim or contract
15 is not a covered loss under the insurance policy. See the attached Notice
16 of Cancellation form for an explanation of this right."
- 17 (7) Be accompanied by a completed form in duplicate that is captioned "Notice
18 of Cancellation," which shall be attached to the contract and easily
19 detachable and which shall contain in bold-face type of a minimum size of
20 10 points, the following information and statements in the same language as
21 that used in the contract:

22
23 "Notice of Cancellation
24 (date of transaction)

25
26 If you are notified by your insurer that all or any part of the claim or contract is
27 not a covered loss under the insurance policy, you may cancel the contract by mailing or
28 delivering a signed and dated copy of this cancellation notice or any other written notice
29 to (name of residential contractor) at (address of residential contractor's place of
30 business) at any time prior to midnight on the third business day after you have received
31 such written notice from your insurer. If you cancel, any payments made by you under
32 the contract will be returned to you within 10 business days following receipt by the
33 residential contractor of your cancellation notice, and any security interest arising out of
34 the transaction will be canceled.

35
36 I HEREBY CANCEL THIS TRANSACTION

37
38 _____
39 (u date)

40 _____
41 (consumer's signature)"

- 42 (8) Include a statement indicating that the residential contractor shall hold in
43 trust any payment from the property owner until the contractor has delivered
44 materials at the property site or has performed a majority of the contracted
45 work on the property.

46 **"§ 75-153. Consumer's right to cancel contract if not covered by insurance.**

47 (a) Right to Cancel. – A consumer who has entered into a written contract with a
48 residential contractor to provide goods or services to be paid from the proceeds of a property
49 and casualty insurance policy may cancel the contract at any time prior to midnight of the third
50 business day after the consumer has received written notification from the insurer that all or
51 any part of the claim or contract is not a covered loss under the insurance policy.

1 **(b) Procedure for Cancellation.** – Cancellation shall be evidenced by the consumer
2 giving written notice of cancellation to the residential contractor at the address stated in the
3 contract. Notice of cancellation, if given by mail, is effective upon deposit into the United
4 States mail, postage prepaid, and properly addressed to the residential contractor. Notice of
5 cancellation need not take a particular form and is sufficient if it indicates, by any form of
6 written expression, the intention of the consumer not to be bound by the contract.

7 **(c) Refund of Payments to Consumer.** – Within 10 days after a contract for general
8 construction has been cancelled, the residential contractor shall tender to the consumer any
9 payments, partial payments, or deposits made by the consumer and any note or other evidence
10 of indebtedness. If, however, the residential contractor has performed any emergency services,
11 acknowledged by the consumer in writing to be necessary to prevent damage to the premises,
12 the residential contractor is entitled to the reasonable value of such services. Any provision in a
13 contract for general construction that in the event of cancellation requires the payment of any
14 fee for anything except emergency services shall constitute a violation of G.S. 75-1.1 and shall
15 not be enforceable against any consumer who has cancelled a contract under this section.

16 **"§ 75-154. Violations an unfair and deceptive trade practice.**

17 In addition to the other penalties set forth in this Article, a violation of this Article shall
18 constitute an unfair and deceptive trade practice under G.S. 75-1.1."

19 20 **PART II. DATABASE FOR ASSISTING IN THE INVESTIGATION OF POTENTIAL** 21 **FINANCIAL EXPLOITATION OF OLDER ADULTS**

22 **SECTION 2.(a)** Article 1 of Chapter 114 of the General Statutes is amended by
23 adding a new section to read:

24 **"§ 114-8.8. Older adult exploitation database.**

25 **(a) Operation of Database Required.** – The Attorney General shall operate and maintain
26 an Internet-accessible database that collects reports made by financial institutions pursuant to
27 G.S. 108A-115(a)(4), and the Attorney General may prescribe the manner and format of reports
28 made pursuant to that subdivision.

29 **(b) Access.** – The Attorney General shall ensure that the database operated under this
30 section is accessible to district attorneys, law enforcement agencies, the Commissioner of
31 Banks, the State Bureau of Investigation, the Department of Insurance, the State Licensing
32 Board for General Contractors, and any other State or local agency that routinely interacts with
33 older adults who may potentially be targets of financial exploitation, in the sole discretion of
34 the Attorney General. The database shall be accessed for the sole purpose of investigating
35 potential financial exploitation of older adults.

36 **(c) Database Contents Not a Public Record.** – The contents of the database operated
37 under this section shall not constitute a public record under Chapter 132 of the General Status
38 and shall be confidential and only accessed by employees of the agencies described in
39 subsection (b) of this section or designated pursuant thereto. The Attorney General shall require
40 all agencies and individuals that access the database to take measures to protect the privacy of
41 its contents and shall ensure that a mechanism is in place to delete incorrect or outdated data
42 from the database.

43 **(d) Input of Data from Sources Other Than Financial Institutions.** – In addition to
44 accepting reports from financial institutions pursuant to G.S. 108A-115(a)(4), the Attorney
45 General may accept and include in the database operated pursuant to this section information
46 from other persons or entities who have reasonable cause to believe that an older adult is the
47 victim or target of financial exploitation. The Attorney General shall take measures to ensure
48 that only reliable sources of information are accepted under this subsection."

49 **SECTION 2.(b)** G.S. 108A-115 reads as rewritten:

50 **"§ 108A-115. Duty to report suspected fraud; content of report; immunity for reporting.**

1 (a) Any financial institution, or officer or employee thereof, having reasonable cause to
2 believe that a disabled adult or older adult is the victim or target of financial exploitation shall
3 report such information to the following:

4 (1) Persons on the list provided by the customer under G.S. 108A-114, if such a
5 list has been provided by the customer. The financial institution may choose
6 not to contact persons on the provided list if the financial institution suspects
7 that those persons are financially exploiting the disabled adult or older adult.

8 (2) The appropriate local law enforcement agency.

9 (3) The appropriate county department of social services, if the customer is a
10 disabled adult.

11 (4) The Attorney General.

12 (b) ~~The report~~ A report made pursuant to subdivisions (1) through (3) of subsection (a)
13 of this section may be made orally or in writing. A report made pursuant to subdivision (4) of
14 subsection (a) of this section shall be made in the manner prescribed by the Attorney General.
15 The report shall include the name and address of the disabled adult or older adult, the nature of
16 the suspected financial exploitation, and any other pertinent information.

17 (c) No financial institution, or officer or employee thereof, who acts in good faith in
18 making a report under this section may be held liable in any action for doing so."
19

20 PART III. EFFECTIVE DATE

21 SECTION 3. This act becomes effective January 1, 2016.